***THE HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY**

+WRIT PETITION No.15884 of 2007

%Date:03.12.2007

#Between:
Sri K.Pavan Raj.

… Petitioner

AND
The Municipal Corporation of Hyderabad,
reptd., by its Commissioner, Tank Bund,
Hyderabad and three others.

… Respondents

!Counsel for the petitioners: Sri M.Ravindranath Reddy

^Counsel for the respondents: Smt.Kalpana Ekbote for R1 & R.2
Sri Gowri Shankar Sanghi for R.3 and R.4.

<GIST:

>HEAD NOTE:

?CASES REFERRED:

1) 2001 (3) ALD 600
2) 2006 (5) ALD 295
3) 2006(2) L.S.330
4) 2007(6) SUPREME 551.

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HON'BLE MR. JUSTICE C.V.NAGARJUNA REDDY

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WRIT PETITION NO.15884 of 2007

ORDER:-

This Writ Petition is one and hopefully the last of the multiple rou the litigation, which the petitioner's father earlier and the petitione subjected themselves.

Briefly narrated, the facts are as under:

One late Abdul Aziz Khan was pattadar of various agricultura comprised in Survey Nos.784 and 786 of Malkajgiri and Survey Nos.19 102 and 227 of Lalaguda village. After the death of the said pattad properties were mutated in the name of Mr.Mohiuddin Khan and other are the legal heirs of the original pattadar, vide Proceedings No.291 da 4-1955. An extent of Ac.33.03 guntas was acquired out of the said land Railways for construction of Railway Staff Quarters and Award datec 1960 was passed under the provisions of the Land Acquisition Act, 189 petitioner claims that the balance land was converted into house plots legal heirs of the original pattadar and one such plot, admeasurir Sq.yards along with room bearing House No.12-7-107/3/2/B (old) in No.786/1 to 5 of Mettuguda village was purchased by the father petitioner under registered sale deed No.164/85 dated 19-1-1985. respondent No.4 tried to interfere with the enjoyment of the said prop the father of the petitioner, he filed O.S.No.17 of 1992 on the file o Assistant Judge, City Civil Court, Secunderabad for perpetual injunctic said suit having been dismissed on 3-12-1996, the petitioner's filed A.S.No.2 of 1997 against the said judgment and decree before Additional Chief Judge, City Civil Court, Hyderabad, and he was unsuc in the said appeal too with the dismissal of the same on 16-10-2000. H filed Second Appeal No.108 of 2001 before this Court and the sam allowed by judgment dated 5-8-2005, whereunder the suit was decree Court while disposing of the second appeal, however, observed respondent No.4 is of the view that the plaintiff deserved to be evictec provisions of any law, it shall be open to them to do so. Evidently, taki

from the said observations, respondent No.3 issued proceedings under S
4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1
14-12-2005. As the petitioner's father died by that time, the pe
questioned the said proceedings by filing Writ Petition No.27566 of 2005
this Court and in W.P.M.P.No.35404 of 2005 this Court passed
dated 27-12-2005 granting interim suspension of the said proce
dt. 14-12-2005.

While the said Writ Petition is pending, the petitioner made appl
dated 25-2-2006 to the Joint Collector, Hyderabad for issue of No Ob
Certificate (NOC) in respect of the property in question for obtaining t
permission from the 1st respondent-Corporation. The said applicatic
rejected by the Joint Collector, Hyderabad, vide: Endorsement dated 9-
on the ground that the land in question is classified as Governmer
belonging to "C.G. Railways" in Town Survey Land Record. The petition
filed Writ Petition No.18051 of 2006 assailing the said endorsement a
Court allowed the said Writ Petition on 25-9-2006, wherein it was held t
action of respondents 1 and 2 in insisting on production of NOC for cons
the building application of the petitioner cannot be sustained in the light
settled legal position. A direction was, therefore, issued to respondents
to receive the petitioner's building application without insisting on NO
the revenue authorities and further to consider the same along with r
documents relating to title and possession and dispose of the sa
accordance with law.

On 13-10-2006 the petitioner made an application for permis
construct a building on the plot in question. On 28/29-6-2007 th
application was rejected. Feeling aggrieved by the said rejection, pe
filed this Writ Petition.

The Divisional Engineer (North), South Central Railway, Hyd
Division at Secunderabad filed a counter-affidavit on behalf of respond
and 4. It is averred, inter alia, that the plot admeasuring 660 Sq.yards,
was allegedly purchased by the father of the petitioner belongs, exclusi

the Railways and that it is within the boundaries of the Railway lan deponent to the counter denied existence of two rooms and any door r and also the claim of the petitioner that the left over land, after acquisi the Railways, was converted into plots by the pattadars; and that in the and Land Records, the land, which was assigned fresh Survey Numb S.Nos.23, 24 and 25, is shown as Railway land and in possession Railways. It is, however, admitted in the counter-affidavit that Second No.108 of 2001 filed by the petitioner's father was allowed on 5-8-2(which a finding was rendered that the petitioner's father was in p possession of the land on the date of filing of the suit and that decree been confined to perpetual injunction and in view of the observations m this Court in the Second Appeal, proceedings under the Public Pr (Eviction of Unauthorized Occupants) Act, 1971 were initiated to ev petitioner, who is an unauthorized occupant of the land and that th Petition filed by the petitioner questioning initiation of the said proceed still pending. The deponent, while also justifying rejection of NOC by th Collector, Hyderabad pleaded that in reply to letter dated 4/7-5-2007 s the Chief City Planner, Greater Hyderabad Municipal Corporation, Planning Section, Hyderabad, requesting the Railways to send their obj for granting permission for construction of building on the disputed si Railways sent their reply on 17-5-2007 stating that they are strongly ob to the grant of building permission as the land belongs to Railways ar Petition No.27566 of 2005 filed by the petitioner, questioning the notice by the Railways under the Provisions of the Public Premises (Evic Unauthorized Occupants) Act, 1971, is pending. It is, therefore, averred view of the dispute of title and the issue being sub-judice before this respondents 1 and 2 are justified in rejecting the application of the petitic granting building permission.

Sri B.Purushottam Reddy, Chief City Planner of the 1st respo Corporation, filed a counter-affidavit and from a reading of it, it is evide the application of the petitioner for building permission was rejected only

sole ground that the Railways, in response to the notice issued Corporation under Building Bye-law No.6.2, objected to the same on the that the issue relating to the title over the plot in dispute is sub-judice Petition No.27566 of 2005. It is also averred that since respondent Nc statutory body, it is required to look into the facts of each case ar disposal of the petitioner's application is in accordance with the provis the Hyderabad Municipal Corporation Act, 1955 (for short "the Act").

Sri M.Ravindranatha Reddy, learned counsel for the pet submitted that the impugned order, by which the petitioner's applicatic rejected suffers from non-application of mind and the reasons given fc rejection were extraneous to the relevant Building Bye-law under objections were called for from respondents 3 and 4. He further submitt when once this Court allowed Writ Petition No.18051 of 2006 declari action of respondent No.1 in refusing to consider the petitioner's applica building permission on the ground of refusal of the Joint Collector, Hyde to issue NOC, it is not open to respondent No.1 to reject the petit application on a similar ground, viz., that the petitioner's title is in dispute

Sri Gowri Shankar Sanghi, learned Standing Counsel for respond and 4 (Railways) submitted that as the Railways have initiated proceedi eviction of the petitioner under the provisions of the Public Premises (E of Unauthorized Occupants) Act, 1971 and till the disposal of Writ F No.27566 of 2005 filed questioning initiation of the said proceeding petitioner is not entitled to raise any construction on the disputed site a respondent No.1 is, therefore, justified in rejecting the petitioner's appl for building permission.

Smt. Kalpana Ekbote, learned Standing Counsel for respondents 2, pursued the same line of argument as was advanced by Sri Gowri S Sanghi.

I have carefully considered the submissions of the respective c appearing for the parties.

To appreciate the rival contentions, it is necessary to refer

relevant statutory provisions governing granting of Building permissions.

Under Section 428 of the Act, every person, who intends to e building shall give to the Commissioner notice of his said intention in a obtained for this purpose under Section 435, specifying the position building intended to be erected, the description of the building, the purp which it is intended etc.

Under sub-Section (1) of Section 429 of the Act, within thirty day receipt of such notice, the Commissioner may, by written notice, requ person who has given the notice to furnish to the Commissioner all or the following documents, namely:-

(a) correct plans and sections of every floor of the building intend erected or re-erected which shall be drawn to a scale of not le one inch to every eight feet and shall show the positior dimensions and means of ventilation and of access to the seve of such building and its appurtenances and the particular part thereof which are, and those which are not, intended to be u human habitation and in the case of a building intended to be us dwelling house for two or more families or for carrying on any business in which number of people exceeding twenty may be er or as a place of public resort, the means of ingress and egres plans and sections shall also show the depth and nature foundation and the proposed dimensions of all the walls, posts, c beams, joints and all girders and scantlings to be used in the wa cases, floors and roofs of such building;

(aa) a copy of the title deed of the land duly attested by a Gazett Officer of the Government together with an urban land ceiling clearance certificate or as the case may be an affidavit referred to in Section 388.

(b) a specification of each description of work proposed to be execu of the materials to be employed. Such specification should in description of the proposed method of drainage of the buildings i to be erected or re-erected and of the sanitary fittings to be us also of the means of water supply and shall if required Commissioner be supplemented by detailed calculations shov sufficiency of the strength of any part of such building;

(c) a block plan of such building which shall be drawn to the scal largest revenue survey map at the time being in existence for the in which the building is; or is to be situated and shall show the and appurtenances of the properties, if any, immediately adjoir width and level of the street, if any, in front and of the street, if an rear of such building, the levels of the foundations and of the low of such building and of any yard or ground belonging thereto means of access to such building;

(d) a plan showing the intended line of drainage of such building, intended size, depth and inclination of each drain, and the d arrangement proposed for the ventilation of the drains.

Under sub-Section (2), at any time within the period of 30 da Commissioner may also by written notice require the said person to o inspection any portion or portions of the foundations or walls of the e building.

Under Section 431 of the Act, the Commissioner is empow require production of additional information and further details within 30 receipt of documents, by giving written notice.

Under Section 432 of the Act, if any requisition made under 429 or 431 of the Act is not complied with, the notice given under Secti of the Act shall be deemed not to have been given.

Under Section 437 of the Act, if within thirty days after receipt of under Section 428 or 433 (notice for making additions etc.,) or of th section, description or further information, if any, called for under Sectio 431 or 434, the Commissioner fails to intimate in writing to the person, w given the said notice, his disapproval of the building which the said proposes to erect or of the work which he proposes to execute, or if, wit said period the Commissioner signifies in writing to the said pers approval of the said building or work, the said person may, at any time one year from the date of the delivery of the notice to the Commi proceed with the said building or work. He shall, however, not contrave of the provisions of the Act or any bye-law made thereunder in construct building.

In exercise of the powers conferred by Section 589 of the A Government of Andhra Pradesh accorded sanction to the Bye-laws ap by the General Body of Municipal Corporation of Hyderabad in its Res No.561, dated the March, 1981. These Bye-laws are called The Mu Corporation Building Bye-Laws, 1981. Bye-law No.4.2 prescribed the documents to be filed and requirements to be complied with while fil

application for building permit. Clause (v) of the said Bye-law stipulat every application for building permit shall be accompanied by the attest of the original sale/lease deed; and attested copy of Revenue Sheet/Municipal Survey Sheet with Mutation Record No. or affidavit o documents acceptable to the Commissioner, MCH, as proof of owner the applicant. Bye-law No.6.2, which is relevant for the present purpose as under:

> "**6.2. Clearance of Sites Adjoining Government property**: In ca notice (application) of intention to erect or re-erect to make alteration in a building or to make or enlarge a wall abutting maintained by a Public Works Department or the property of Authority or Government or other statutory Body the notice sha duplicate and the building and site plans shall be in quintuplicate. On the notice with plans and the site plan shall be forwarded by the aut the Officer-in-Charge of the Government Department. Military Autl Officer-in-Charge of the Statutory Body of State whether he h objection to the proposed construction. If no such report is receiv such officer within 15 days it will be deemed that the said dep authority has no objection to the grant of the permission. No permissi be refused on the basis of any objection which is not sustained provisions of these bye-laws or any other law applicable thereto".

The scope and ambit of the power of the Commissioner Municipal Corporation under Section 428 and 429, in particular, to the e his power to examine the title of the applicant for building permit has fa consideration of this Court in **HYDERABAD POTTERIES PRIVATE LI V. COLLECTOR, HYDERABAD**[1]**.** In para 40 of the said judgment it thus:

> "Of course, the Commissioner has to consider the objections, if any for grant of permission. But, an objection raised by a member Committee itself would not be enough to reject the application for permission. The Commissioner is required to make pragmatic asse of the material available on record and decide the question of prima f and lawful possession of the applicants. The applications for permission cannot be rejected solely on the basis of TSLR entries. the decision to grant permission itself would not confer any title u applicant, nor it would take away the rights of the objector (s), whe Government or any individual, for asserting their right, title and intere land in respect of which permission has been granted and dispute th any manner known to law. Similarly, the Commissioner is not er decide any disputed questions of title or the ownership. All t Commissioner required to do is to find out *prima facie* title an possession of the applicant and obviously such consideration is cor only for the purposes of granting permission and nothing more".

In Writ Petition No.18051 of 2006 filed by the petitioner a respondents 1 and 2 questioning their action in not receiving and cons his application for building permission, this Court considered the judgments of this Court in **K.MANEMMA V. MUNICIPAL CORPORATI(HYDERABAD AND ANOTHER**[2] **Dr.G.ANANDA KUMAR REDDY ANOTHER V. THE MUNICIPAL CORPORATION OF HYDERABAI ANOTHER**[3] and other unreported judgments and held that refusal t(building permission on the ground of non-production of NOC or TSLR Survey Department is illegal. On that premise, the said Writ Petitic allowed and respondents 1 and 2 were directed to consider the petit application without insisting on production of NOC from the R(Authorities.

A perusal of the impugned order of rejection shows that the petit application was rejected on two grounds, viz., (1) that as per the court r Sri Hansaraj (father of the petitioner) had already died, but the applicati(filed on his name, and (2) that as per Building Bye-law No.6.2 clearz sites adjoining the Government property is required, that the site reference is adjoining the South Central Railway property and the F Authorities are strongly objecting to grant of building permission on the that Writ Petition No.27566 of 2005 is pending in this Court and that, the the issue of title to the property is sub-judice.

As regards ground No.1 supra, in the counter-affidavit respon(and 2 have not reiterated the same to justify the order or rejection. In any there is no dispute that the petitioner is the son of Sri Hansraj and petitioner claims that since the property stood in the name of his father application his father's name was shown. However, this defect point being a curable one, the petitioner is permitted to give required clarit and, if necessary, file a fresh application in his name.

Therefore, on this objection, respondents 1 and 2 are not just denying grant of building permission to the petitioner.

The other ground, which is substantial, as noted hereinabove, p

to the objection raised by the South Central Railway under Bye-law No.6

From a reading of the said Bye-law, which is reproduced herein it is clear that it does not empower the 1st respondent-Corporation to er an objection relating to a title dispute. It only facilitates the adjacent p holder, viz., Public Works Department, Military authority or Governm other Statutory Body, to raise objection to the proposed construction ob to ensure that the proposed building does not obstruct or hinder the activ the said authorities/bodies. It is significant to notice the caveat conta the said clause, viz., "no permission shall be refused on the basis objection which is not sustained by any provisions of these bye-laws other law applicable thereto".

A careful reading of the provisions of the Act and the Bye-law not indicate that the Commissioner is empowered to entertain a title and adjudicate the same before disposing of the application for grant of b permission. Indeed, both the provisions of Sections 428 and 429 and cla of Bye-law 4.2 envisage filing of copies of title deeds and there is no pr under which the Commissioner can reject grant of building permit ground of title dispute. As held in **HYDERABAD POTTERIES** (1 supra) objection regarding title is received, the Commissioner is required to be facie satisfied about the applicant's title to the property and his possession of the same and he cannot decide title dispute because neither one of the duties assigned to him nor he is provided with s adjudicatory mechanism. A person setting up a rival claim of title, is approach the court of competent jurisdiction and seek appropriate relief regard. If the applications for building permissions are rejected merely ground of third parties raising disputes of title, that may result in s hardship to the owners of the properties where frivolous, speculati vexatious claims may be made by third parties by setting up title. The wherever the Commissioner is, prima facie, satisfied about the legal title applicant and his lawful possession, he is bound to consider the applica

building permission on merits, leaving the objector free to approa appropriate court of law.

In the instant case, this Court in Second Appeal No.108 of 200 by the father of the petitioner, gave a categorical finding that the petit father was in possession of the property and in the process the learned found fault with the findings of the trial Court that title deeds of the petit father contained several defects. The learned Judge also observed that t Court, having recorded a finding that respondent No.4 failed to make c case of its own, dismissed the suit. These observations in the judgmen Second Appeal, prima facie, go to show that respondent No.4 fa convince this Court that they have lawful title over the property. In any since Writ Petition No.27566 of 2005 is pending, the issue relating to t could be decided therein. As the scope of objection raised by respond and 2 based on title to the property falls outside the purview of Bye-law I respondent No.1 ought not to have given credence to the objections rai respondents 3 and 4.

It is worthwhile to notice that neither in the objections f respondents 3 and 4, nor in the impugned order of rejection, any ob based on the technical grounds, such as causing of obstruction or hin for proper and convenient utility of Railway property by the proposed b has not been raised. Therefore, the objections, which were raised Railways, based on title, fall outside the scope of Bye-law No.6.2 and re of building permission on the basis of those objections is not sustain law.

The judgment of the Supreme Court in **CITY AND INDUS DEVELOPMENT CORPORATION OF MAHARASHTRA AND ANOTH EKTA MAHILA MANDAL AND ANOTHER**[4] relied upon by the l Standing Counsel for respondents 3 and 4 has no relevance, whatsoe the facts of the present case.

For the aforementioned reasons, the Writ Petition is allowed. dated 28/29-6-2007 passed by 2nd respondent is set aside. Respondents

2 are directed to consider the application of the petitioner for grant of t permission afresh within a period of four (4) weeks without reference objections filed by respondents 3 and 4. It is, however, made cle granting of building permission to and construction of the building petitioner shall be subject to the outcome of Writ Petition No.27566 of 20

(C.V.NAGARJUNA

REDDY,J)

Dt.03-12-2007

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[1]) 2001 (3) ALD 600

[2]) 2006 (5) ALD 295

[3]) 2006 (2) L.S.330

[4]) 2007(6) SUPREME 551